

COOK COUNTY SHERIFF'S MERIT BOARD

Sheriff of Cook County)	
)	
vs.)	
)	Docket No. 1945
Police Officer)	
Cierra T. Thurman)	
Employee # [REDACTED])	
Star # 166)	

DECISION

This matter coming on to be heard pursuant to notice before Gray I. Mateo-Harris, Board Member, on August 9, September 13, and September 18, 2017, the Cook County Sheriff's Merit Board finds as follows:

Jurisdiction

Cierra T. Thurman, hereinafter Respondent, was appointed a Correctional officer on March 14, 2011, admitted to the Training Academy as a Police Officer Recruit on October 5, 2014, and assigned to Skokie Patrol with the Cook County Sheriff's Police Department as a Probationary Police Officer on January 4, 2015. Respondent's position as a Probationary Police Officer involved duties and responsibilities to the public; each member of the Cook County Sheriff's Merit Board, hereinafter Board, has been duly appointed to serve as a member of the Board pursuant to confirmation by the Cook County Board of Commissioners, State of Illinois, to sit for a stated term; the Board has jurisdiction of the subject matter of the parties in accordance with 55 ILCS 5/3-7001, *et seq*; and the Respondent was served with a copy of the Complaint and notice of hearing and appeared before the Board with counsel to contest the charges contained in the Complaint.

As a threshold matter, a proceeding before the Merit Board is initiated at the time the Sheriff files a written charge with the Merit Board. 55 ILCS 5/3-7012. A document is considered filed, in this case with the Merit Board, "when it is deposited with and passes into the exclusive control and custody of the [Merit Board administrative staff], who understandingly receives the same in order that it may become a part of the permanent records of his office." See *Dooley v. James A. Dooley Associates Employees Retirement Plan*, 100 Ill.App.3d 389, 395 (1981)(quoting *Gietl v. Commissioners of Drainage District No. One*, 384 Ill. 499, 501-502 (1943) and citing *Hamilton v. Beardslee*, 51 Ill. 478 (1869)); accord *People ex rel. Pignatelli v. Ward*, 404 Ill. 240, 245 (1949); *in re Annex Certain Terr. To the Village of Lemont*, 2017 IL App (1st) 170941, ¶ 18; *Illinois State Toll Highway Authority v. Marathon Oil Co.*, Ill. App. 3d 836 (1990) ("A 'filing' implies delivery of a document to the appropriate party with the intent of having such document kept on file by that party in the appropriate place." (quoting *Sherman v.*

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Board of Fire & Police Commissioners, 111 Ill. App. 3d 1001, 1007 (1982)); *Hawkyard v. Suttle*, 188 Ill. App. 168, 171 (1914 (“A paper is considered filed when it is delivered to the clerk for that purpose.”)).

The original Complaint in this matter was filed with the Merit Board’s administrative staff on January 3, 2017. Regardless of whether or not Merit Board Members were properly appointed during a given term, the Merit Board, as a quasi-judicial body and statutorily created legal entity, maintained at all times a clerical staff not unlike the Clerk of the Circuit Court (“Administrative Staff”). These Administrative Staff members receive and date stamp complaints, open a case file, assign a case number, and perform all of the functions typically handled by the circuit clerk’s office. Just as a timely filed complaint would be accepted by the circuit clerk even if there were no properly appointed judges sitting on that particular day, so too was the instant Complaint with the Administrative Staff of the Merit Board. Accordingly, the Complaint filed on January 3, 2017 commenced the instant action, was properly filed, and will be accepted as the controlling document for calculating time in this case.

Findings of Fact

The Sheriff filed a complaint on December 30, 2017. The Sheriff is requesting Respondent’s discharge from employment.

Respondent was appointed a Correctional officer on March 14, 2011 (Tr. 216), admitted to the Training Academy as a Police Officer Recruit on October 5, 2014 (Tr. 216-217), and assigned to Skokie Patrol with the Cook County Sheriff’s Police Department (“CCSPD”) as a Probationary Police Officer on January 4, 2015 (Tr. 217).

[REDACTED] is the Executive Director for the CCSPD. (Tr. 13). He filed the complaint register in this matter against Respondent after learning that, as a so-called probationary employee, she had allegedly violated certain Rules of Conduct by engaging in secondary employment and posting exercise videos engaging in conduct [REDACTED] believed to be contrary to her medical restrictions. (Tr. 15-17).

[REDACTED] is an experienced nurse with the Cook County Sheriff’s Office (“CCSO”) in the Department of Human Resources, and as such, she handles the return to work of employees based on their doctor’s instructions and manages the restrictions placed on the same. (Tr. 24). On or about July 31, 2015, Respondent’s doctor’s note limited certain activity in connection with her knee surgery, for example: squatting, kneeling, walking, and standing. (Tr. 25-29). The restrictions were increasingly reduced on August 26th, September 23rd and November 4th. (Tr. 30-34). The doctor’s notes consistently noted “home exercises.” (Tr. 38).

[REDACTED] is a long-term employee of the CCSPD most recently serving as its Deputy Inspector. (Tr. 42). As such, [REDACTED] conducts investigations on behalf of the Office of Professional Review (“OPR”). (Tr. 43).

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[REDACTED] investigated [REDACTED]'s complaint register with respect to Respondent (Tr. 46-47) by: (i) reviewing videos from Respondent's Twitter and Instagram accounts of her home exercises in tandem with reviewing her doctor's restrictions relative to her transitional work assignment (Tr. 48, 54-56, 58-59, 64-69, 76-78); (ii) reviewing photographs and videos from Respondent's social media accounts in which she identifies herself as a CCSPD Police Officer and/or wears her CCSPD uniform – including in connection with promoting her book (Tr. 78, 83-86); (iii) reviewing Respondent's publishing company website for the sale of her book (Tr. 88-90); (iv) reviewing videos of her performing as an extra on the T.V. show Empire, meeting with the production Company to verify Respondent served as an extra on Empire three different dates and received payments for the same, and reviewing Payroll Department documentation from the production company as to the same (Tr. 48-49, 84); and (v) interviewing Respondent (Tr. 51).

[REDACTED] concluded Respondent had the ability to squat and kneel contrary to her medical documents, and therefore, must have been falsifying her documentation and abilities regarding her transitional work assignment. (Tr. 61, 87). [REDACTED] also concluded Respondent was working secondary employment as both an extra on Empire and in connection with her publishing company, related consulting services (\$99 consultation) and/or book sales. (Tr. 88-90, 94, 98-104). [REDACTED] further concluded that Respondent's appearance on the A.C. Green radio show also violated the Department's policy against talking to the media without prior approval by appearing on the show and identifying herself as a police officer during her appearance. (Tr. 124-25). In summary, [REDACTED] determined Respondent violated the Department's social media, media relations conduct, secondary employment and falsification of medical records/status policies. (Tr. 126, 129, 132-37, 143, 151-53, 158-60, 181-82, 185, 191).

Dr. [REDACTED], M.D. is an experienced orthopedic surgeon who performed left knee surgery on Respondent in July 2015. (Tr. 298). Dr. [REDACTED] testified credibly that he: (i) had no discussions with Nurse [REDACTED] regarding Respondent or her home exercises (Tr. 270, 304); (ii) had provided both work restrictions and home exercises for Respondent, and that the latter were intended to help her regain motion and remove stiffness so that, for example, she was restricted from "kneeling" at work but not in home exercises (Tr. 298-302); and (iii) did not believe Respondent could go back to work until she was fully cleared to return to work (Tr. 305).

Respondent admits that she: (i) posted information on social media identifying her as a CCSPD police officer and shared the same with CCSPD supervisors without anyone challenging her conduct as improper and, indeed, she saw the same conduct widely duplicated by other CCSPD employees (Tr. 141, 192-93, 281-82, 293-94); (ii) previously emailed Chief [REDACTED] and Chief [REDACTED] regarding publishing her book with only positive responses and congratulatory remarks (Tr. 224-227, 294-95); (iii) never received any money as a result of her publishing company website particularly as she never held any client consultations for \$99 or any fee (Tr. 90-93, 229); (iv) only identified herself as a police officer (not a CCSPD police officer) on the A.C. Green radio show (Tr. 125, 197,

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230, 293); (v) did not consider appearing on the T.V. show Empire as an extra with her friends solely for fun to be secondary employment – particularly given that she was paid less than \$500 for all three appearances combined which was far less than her regular CCSPD paycheck, and had openly notified her superior of this appearance (Tr. 231, 275, 290-93); and (vi) performed her home exercises in accordance with her doctor's notes and instruction, and took the social media videos at issue on a mirror so that the images themselves were reversed (*i.e.*, she was not strenuously exercising her injured knee) (Tr. 270-71, 286-87).

Conclusion

Based on the evidence presented, and after assessing the credibility of witnesses and the weight given by the evidence in the record, the Board finds that the Sheriff has failed to meet its burden of proof in establishing that Respondent violated any of the following policies, rules and regulations:

- (1) CCSPD Rules and Regulations, General Order # ROC-00-01-A, including:
 - a. A.11.12, Secondary Employment ("Approval must be obtained prior to accepting or commencing secondary employment.")
 - b. A.14.1, Publicity ("Members will not seek personal articles publicity in the course of their employment. In the event that . . . any type [of] media . . . highlights individual Department Officers . . . member must receive prior written approval through the chain of command before such work is initiated.")
 - c. A.14.3, Public Appearances ("Department members will not . . . appear on radio or television programs . . . wherein, they are identified as an Officer or civilian of the Department . . .")
 - d. A.15.6, Physical and Mental Condition ("Officers will not feign illness or injury, falsely report themselves ill or injured, or otherwise deceive any official of this Department . . . as to the condition of their health.")
- (2) CCSPD Policy 1020.3(b), Restrictions and Limitations of Secondary Employment ("Working Secondary Employment is prohibited . . . "[w]hen the member is a probationary member, except following promotions within Departments.")
- (3) Sheriff's Order 11.4.55.3.VII.B., Restrictions and Limitations of Secondary Employment (same as (2).)
- (4) Sheriff's Order 11.2.20.1, Conduct Policy (governing off duty conduct).
- (5) CCSPD Policy 321, Conduct (same as (4)).
- (6) CCSPD Policy 1029.3.2(g), Employee Speech, Expression and Social Networking ("Posting . . . images of Sheriff's Office logos, emblems, uniforms, badges . . . or other material that specifically identifies the Sheriff's Office on any personal or social networking or other website . . .")
- (7) CCSD Merit Board Rules and Regulations, Article X, Paragraph B, No. 3. (prohibiting violations of applicable order and rules).

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First, as an initial matter, the Sheriff failed to establish that Respondent's transitional work assignment resulted in an extension of her probationary period despite conflicting documentary and testimonial evidence on this point. Nevertheless, this differentiation is not dispositive given that the Sheriff ultimately failed to establish that Respondent's status as a promotional probationary employee officially robbed her of her rights as a long-tenured Cook County Sheriff's Correctional Officer. Clearly, Respondent is not a probationary employee who can be terminated for little or no reason. If such was the case, the Sheriff would not have brought this matter before the Board. In fact, the very filing of this case with the Board operates as a waiver of Sheriff's argument that it could discharge Respondent for any reason as a probationary employee.

Second, the evidence established that Respondent was properly placed in a transitional work assignment following knee surgery, and that the videos posted to her social media accounts depict her home exercises which were ordered by her surgeon. Her surgeon made clear through is testimony that her work restrictions did not apply to her home exercises, which were designed to strengthen her knee. Common sense dictates that Respondent would have had to exercise her knee to some degree before being well enough to have her work restrictions lifted.

Third, the Sheriff offered no evidence establishing that appearing as an extra on the T.V. show Empire three times in what appeared to be social outings with friends that were hardly lucrative, maintaining a publishing website that resulted in no payments to Respondent, or publishing a book for sale which may not have resulted in any payments to Respondent (and royalties from which were exempted from the applicable rules and regulations) somehow fell within the ambit of the phrase "secondary employment." The phrase "secondary employment" is not defined in the rules and regulations submitted by the Sheriff, and the Sheriff simply did not produce evidence establishing that the aforementioned conduct was prohibited by such rules. Notably, the challenged conduct did not even relate in any way to Respondent's work for the Department. The ordinary manner in which such a violation is routinely brought to the Merit Board is when, e.g., a police officer is also regularly working as a security guard at a bar. Respondent's conduct pales in comparison to such conduct.

Fourth, while her public appearance on the A.C. Green radio show in which she identified herself as a police officer was perhaps poorly handled by Respondent, it certainly did not run afoul of the rules proffered by the Sheriff which would have prohibited such appearance had she actually identified herself as a member of the CCSPD. Therefore, the Sheriff did not meet its burden of proof relative to these allegations.

Finally, the Merit Board cannot ignore the documentary evidence establishing that a number of other officers (including supervisors) actively posted images of themselves in uniform or otherwise displayed their star or the CCSPD insignia, and cannot ignore the Sheriff's own witness' testimony that the social media rule is very rarely enforced and only in response to a

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specific complaint. Ill-enforced rules give rise to potential claims of foul play, and given the specific evidence obtained at trial, the Merit Board finds that the Sheriff did not meet its burden of proof on this allegation. Even if the Sheriff had met its burden of proof on this point, it would only have established, at best, a *de minimis*, technical violation meriting no disciplinary action.

Order

Wherefore, based on the foregoing, it is hereby ordered that the Sheriff's request to remove Respondent Cierra T. Thurman from the Cook County Sheriff's Police Department is DENIED effective January 3, 2017.

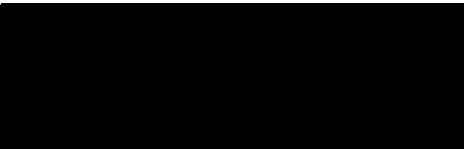
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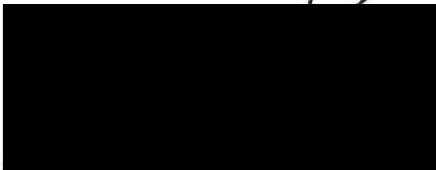
James P. Nally, Chairman



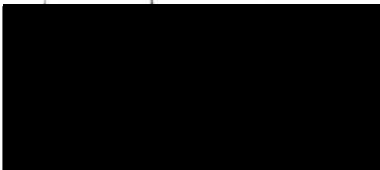
Byron Brazier, Vice-Chairman



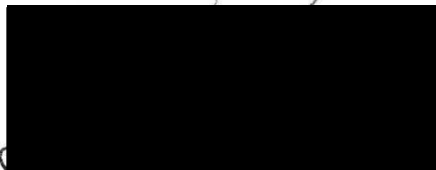
John Dalicandro, Secretary




Kim R. Widup, Board Member



Vincent T. Winters, Board Member



Juan L. Baltierres, Board Member



Patrick Brady, Board Member



Gray Mateo - Harris, Board Member

Date December 14, 2018